

June 7, 2021

Via the Commission's Internet Comment Form:

www.sec.gov/rules/submitcomments.htm

Vanessa A. Countryman
Secretary
United State Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number S7-24-16

Dear Secretary Countryman,

Mediant Communications Inc. appreciates this opportunity to respond to the Commission's reopening of the comment period on its 2016 proposal to require the use of universal proxy cards in all non-exempt solicitations in connection with contested elections of directors (the "Proposal").

Mediant commented on the Proposal in November 2018 in connection with the then upcoming SEC Staff Roundtable on the Proxy Process. We were then and continue to be in strong support of the requirement to use a universal proxy ballot in contests for the election of directors, and we stand by the views expressed in our 2018 letter, which is attached.

We will take this opportunity to comment on a few of the subjects noted in the Release reopening the comment period.

Solicitation Requirement

As we said in our 2018 letter, we favor requiring the dissident to solicit 100% of the shareholders. We believe this to be only fair, given that the issuer will do so. We fail to see the logic in reducing solicitation costs for the dissident vs the issuer, especially since it would inevitably cause confusion for at least some of the shareholders not solicited by the dissident, who would have to search the SEC website to locate the biographical and other information contained in the dissident's filed proxy statement.

Compounding this is the fact that the population of retail holders with small shareholdings has increased significantly in recent years. Such holders are often quite vocal, and it is likely they will strongly object to being treated



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unequally when compared with institutional holders and professional investors.

A 100% solicitation requirement will also be important with respect to dual class companies with disparate voting rights, where a dissident could well avoid soliciting an entire class of holders, when the high vote stock comprises more than the majority of voting power that the current Proposal requires be solicited by the dissident.

Virtual Shareholder Meetings

The Commission notes that virtual shareholder meetings have increased in frequency during the pandemic restrictions beginning in 2020 and asks to what extent this development should affect its assessment of the Proposed Rules. In short, we do not believe that an increased use of virtual meetings should impact these issues.

We expect that post-pandemic, virtual shareholder meetings will be significantly more common than they used to be. But we do not believe that this should impact the desirability of a universal proxy rule for contests. For one thing, it is likely that once virtual meetings are not needed to deal with pandemic restrictions, most contests will result in a physical meeting. But to the extent a virtual meeting is used in a contest, we can expect that the overwhelming majority of shareholders will continue to vote by sending in the voting instruction form or voting online in advance of the meeting date, where they will enjoy the benefits that the universal proxy provides. And in our view, the use of a universal proxy ballot will only simplify the task of tabulating the votes, both those cast in advance of the meeting and those cast at the meeting itself.

Apply the rule to Closed End Funds (CEFs) and Business Development Companies (BDCs)

We support amending the proposed rule to apply it to CEFs and BDCs. In our experience contests are not uncommon for these entities, and we believe their shareholders would benefit from a universal proxy rule just as the shareholders of business corporations will. We do not see a need to make any exception for CEFs or BDCs that are subject to a state law that does not require annual meetings.

Contests are extremely rare among mutual funds, however, and their organizations can be more complex, so we would agree that it is not necessary or desirable to extend the Proposal to apply to them.

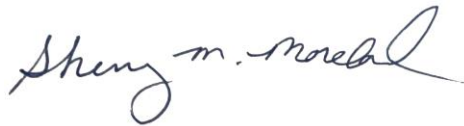
Voting Instruction Forms (VIFs)

Although this was not mentioned by the Commission in the original 2016 proposing release or in the 2021 release reopening the comment period, the Universal Proxy Working Group stated in an August 2020 letter to the Commission staff that it “would favorably view the SEC Staff having authority where necessary and appropriate to also facilitate the fair presentation of all nominees on vote instruction forms (VIFs) and electronic proxy voting platforms in the context of proxy contests.”

Mediant always mirrors the ballot in our VIFs sent to beneficial shareholders, so we would of course do the same when a universal proxy ballot is used. We believe this is standard practice in the industry, so we do not believe rule making is necessary in this regard. However, since it is our practice, we would not object to the SEC offering guidance to this effect.

Thank you for the opportunity to comment on the desirability of requiring the use of a universal proxy ballot in contests for the election of directors. If we can answer any questions or provide any additional information, please let us know.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Sherry M. Moreland". The signature is fluid and cursive, with the first name "Sherry" being more prominent.

Sherry Moreland
President & Chief Operating Officer



November 6, 2018

By email to rule-comments@sec.gov

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. 4-725 SEC Staff Roundtable on the Proxy Process

Dear Mr. Fields,

Mediant Communications Inc. appreciates the opportunity to submit this letter regarding certain U.S. proxy voting issues in advance of the upcoming SEC Staff Roundtable on the Proxy Process. We previously commented on the mechanics of the proxy voting process,¹ and on how to increase retail shareholder participation in that process.² In this letter we wish to communicate our strong support for requiring the use of a universal proxy ballot in contests for the election of directors.

Mediant delivers investor communications and technology solutions to leading banks, brokers, corporate issuers, funds and investment advisors. We are a premier provider of proxy services which include the distribution of electronic and printed proxy materials and processing votes of beneficial owners for our bank and broker clients. We perform similar functions for corporate and mutual fund issuers and their registered shareholders, as well as act as master tabulator for shareholder meetings. In this role we are responsible for validating and applying the votes cast. Given our substantial involvement in the process of soliciting and counting votes in contested elections, we are well aware of the difficulties and complexities involved. As a result, we are convinced that requiring the use of universal proxy ballots will greatly reduce shareholder confusion and simplify processing, to the benefit of everyone involved.

As we stated in our October 24th comment letter, we believe that the U.S. proxy voting system works well, but that there is room for incremental improvement. One area in which such improvement would be welcome, is the obtaining, processing and applying of shareholder votes in contested elections. These contests can be inherently complex, with shareholders often being solicited multiple times with competing ballots from management and the dissident. The votes returned must be reviewed to ensure only the latest ballot is counted and that the votes are marked properly. We believe that a requirement that both sides use a universal proxy ballot in contested elections, as was proposed by the SEC in November 2016,³ would reduce complexity and assure more cost-effective and accurate voting in contested elections. We expect it would also reduce the number of solicitations because an investor would clearly see all the options at once and can make a single, well informed decision on how to vote.

An important policy objective of the SEC was to allow shareholders to cast votes for director nominees across both management's and the dissident's slates in a way that would replicate the in-person voting process available if one is able to attend the shareholders' meeting. We agree that this would be a valuable enhancement to the entire fairness of the proxy voting process in contested elections.

¹ Letter from Sherry Moreland, President and Chief Operating Officer of Mediant Communications Inc., dated October 24, 2018.

² Letter from Sherry Moreland, President and Chief Operating Officer of Mediant Communications Inc., dated November 1, 2018

³ SEC Release Number 34-79164; 81 FR 79122 (November 10, 2016).



More precise presentation and formatting rules are needed

We applaud the SEC for the thought and effort it put into the 2016 proposal. While we support that proposal, we think that to ensure the maximum success of a universal proxy ballot regime, there are certain ways in which the proposal needs additional precision to maximize its effectiveness.

In this regard, we support the comments put forth on the 2016 proposal by the Securities Industry and Financial Markets Association (SIFMA) in its letter dated January 11, 2017. SIFMA's comments suggested that the proposal would benefit from clearer presentation and formatting rules. Since shareholders will receive cards from both management and the dissident, we believe it will be important that the appearance and presentation of information on the cards be essentially identical.

There should be rules governing the treatment of mismarked proxy ballots

We also agree with SIFMA's call for rules governing the treatment of mismarked proxy ballots. Identical ballots will reduce confusion, but the possibility would remain that shareholders can make mistakes when the number of nominees on a ballot exceeds the number of director positions open for vote. While proxies that are voted electronically will have safeguards to assure the votes do not exceed the permitted parameters, it is not possible to do the same with paper ballots, although we support presentation requirements that will do as much as possible to clarify this issue for shareholders using paper ballots. We would support a reasonable process for the return to shareholders of mismarked ballots so that they can be marked correctly. Time may not always permit the completion of such a revote, but the chance to secure a compliant ballot is worth taking when the alternative is loss of a vote due to disqualification. Of course, we also believe it should be clear that the proponent of a mismarked ballot should be responsible for the cost of the return and resubmission, including the processing costs involved.

Require dissidents to solicit all shareholders

We suggest one other change to the 2016 proposal, regarding the proportion of the shareholder population that must be solicited by the dissident. In its proposal, the SEC provided that a dissident must solicit at least a majority of the voting power of shares entitled to vote on the election of directors. We believe that essential fairness, and the desire to reduce complexity in the process, means that dissidents should be required to solicit all shareholders, as is required of management.

It is not unusual for a majority of the voting power of a company to be held by institutional investors. In these cases, the effect of the SEC's proposal could easily be that retail shareholders would not receive the dissident's solicitation, leaving them to search the SEC's website for the dissident's materials and an explanation of the background of the additional nominees on the proxy ballot received from management. In addition to the questionable fairness of this disparate treatment, this cannot help but contribute to confusion among the retail shareholder population. Requiring dissidents to solicit all shareholders will ensure that retail shareholders are fully informed regarding all the nominees and give them the opportunity to vote with all the needed information at hand.

The rule as amended should be repropose for comment

We believe that Mediant's systems and technology are ready to handle a required universal proxy ballot as proposed by the SEC. Mediant's work with Non-U.S. issuers has required that we develop systems capable of dealing with a wide range of complex voting structures, and while there may be some need to slightly adjust systems to fit new U.S. requirements, we are optimistic that could be accomplished relatively quickly. However, we urge the Commission to not only proceed with a universal proxy requirement, with the enhancements we have discussed, but to also release a revised rule for additional comment, so that all involved will have the chance to consider the proposal's impact and further examine the changes and how best to address them.



Thank you for the opportunity to comment on the desirability of requiring the use of a universal proxy ballot in contests for the election of directors. If we can answer any questions or provide any additional information, please let us know.

Very truly yours,

Sherry Moreland
President & Chief Operating Officer

cc: The Honorable Jay Clayton, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
William Hinman, Director, Division of Corporation Finance
Dalia Blass, Director, Division of Investment Management